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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,699	03/04/2002	David F. Bantz	YOR920010530US1	4789
29683	7590	06/08/2006	EXAMINER	
HARRINGTON & SMITH, LLP 4 RESEARCH DRIVE SHELTON, CT 06484-6212			WILLIAMS, JEFFERY L	
			ART UNIT	PAPER NUMBER
			2137	

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/090,699	Applicant(s) BANTZ ET AL.	
	Examiner Jeffery Williams	Art Unit 2137	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-29.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 20060522
13. ☒ Other: See Continuation Sheet.


EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The amendments to claims 1, 13, 21, 25, and 27 introduce issues under 35 USC § 112, 2nd paragraph.

The amendments to claims 21 - 24 and 27 change the scope of the claims and create a new combination of limitations that was not previously considered.

Continuation of 13. Other: Applicant's arguments filed 4/25/06 have been fully considered but they are not persuasive.

Applicants' representative argues primarily that:

(i) Nii does not appear to be concerned with displaying copyrighted or copy protected data. Thus, one of obvious skill would not modify Nii by Kori because the intended environments of use of Nii (i.e., kiosks) are unlikely to be favored if they were to displayed data in its encrypted form and, also, because Nii expresses no need or desire for the display of copyrighted or copy protected data.

Thus, claims 1-4, 6, 9, 10, 13, 15, 17, and 25 are allowable over Nii in view of Kori. (Remarks, pg. 9)

In response, the examiner first points out that the applicant's representative misinterprets the reference of Nii. Nii does in fact pertain to displaying copyrighted or copy protected data (Nii. fig. 2; pars. 4-7, 18-21).

Second, the examiner points out that the arguments of the applicant's representative are contradictory, as the applicant's representative argues that Nii does pertain to displaying data that is copyrighted or copy protected (Remarks, pg. 8, par. 3).

Third, the examiner finds the arguments of the applicant's representative, essentially - the representative's feelings that unauthorized users (those who are unauthorized to view protected content) would be unlikely to favor not being allowed to see the protected data, to be unpersuasive. The reference of Nii and Kori clearly shows that unauthorized users should not be allowed to properly see the protected content, irrespective of whether such unauthorized users would be in favor of such an arrangement or not.

(ii) The applicant's representative argues that claims 7, 8, 26, 27, 11, 12, 16, 19, 20, 5, 14, 18, 28, and 29 are allowable (Remarks, starting on pg. 9).

In response, the examiner finds these arguments unpersuasive for the same reasons shown above.

(iii) Neither Nii nor Fairman appear to disclose or fairly suggest a condition where security is determined to be compromised. Claim 21 recites "sending a different decryption key seed to a user if security is determined to be compromised." Thus, claim 21 is allowable over the prior art of record. (Remarks, pg. 11).

In response, the examiner first points out that the amendments to claim 21 introduce issues under 35 USC § 112, 2nd paragraph, change the scope of the claims (21 - 24 and 27), and create a new combination of limitations that was not previously considered.

Second, the examiner respectfully directs the attention of the applicant's representative to the rejection of claim 21, wherein it is explained that a "determination that security has been compromised" has been shown.

(iv) Apparently, in Nii, the keys are transmitted through wired or direct contact connections (e.g. paragraph 0060). Fairman appears to disclose a secure module 4 in customer terminal 3. Neither Nii nor Fairman appear to disclose a decryption key is transmitted from a key FOB by a wireless transmitted in the key FOB. Thus, claim 22 is allowable over the prior art of record for this additional reason.

In response, the examiner directs the attention of the applicant's representative to (Nii, par. 62, fig. 2).

(v) Regarding the deletion of a decryption key, Applicant requests that a teaching from the prior art be provided or the provision of an affidavit by the patent examiner declaring the patent examiner's knowledge regarding the subject matter the patent examiner is expounding upon (see page 13, line 17, through page 14, line 6, of the Final Office Action mailed February 21, 2006). (Remarks, pg. 13)

In response, the examiner notes it is apparent that the applicant's representative feels that the deletion of an decryption key after the key has been used for it's intended purpose is non-obvious and novel over both prior art and logical reasoning.

The examiner finds the position of the applicant's representative to be unpersuasive and maintains the rejection that such is obvious in view of logical reasoning.

First, the examiner respectfully directs that attention of the applicant's representative to the MPEP section 2144:

Sources of Rationale Supporting a Rejection Under 35 U.S.C. 103
 RATIONALE MAY BE IN A REFERENCE, OR REASONED FROM COMMON KNOWLEDGE IN THE ART, SCIENTIFIC PRINCIPLES, ART- RECOGNIZED EQUIVALENTS, OR LEGAL PRECEDENT
 The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth test for implicit teachings); In re Eli Lilly & Co., 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); In re Nilssen, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); Ex parte Clapp, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985)

(examiner must present convincing line of reasoning supporting rejection); and Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

THE EXPECTATION OF SOME ADVANTAGE IS THE STRONGEST RATIONALE FOR COMBINING REFERENCES

The strongest rationale for combining references is a recognition, expressly or impliedly in the prior art or drawn from a convincing line of reasoning based on established scientific principles or legal precedent, that some advantage or expected beneficial result would have been produced by their combination. In re Sernaker, 702 F.2d 989, 994-95, 217 USPQ 1, 5-6 (Fed. Cir. 1983).

Second, the examiner points out to the applicant's representative that the deletion of an decryption key after some time (i.e. after it has been used) is clearly logical and obvious to someone of understanding for any number of reasons. In the instant case, the examiner has explained that it would have been logical to delete used decryption keys for purposes of security so that the decryption key would be unavailable after a certain time, such as when a key expired. The applicant is respectfully encouraged to take note of such a principle being employed in the prior art (as evidenced by Chen et al., Abstract; pars. 79-81; claim 7)..